

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

FREDRICK MASON,
ADC #109138

PLAINTIFF

5:12CV00160-SWW-JTK

WENDY KELLY, et al.

DEFENDANTS

ORDER

The Court has received proposed findings and recommendations from United States Magistrate Judge Jerome T. Kearney, recommending that plaintiff's claims of deliberate indifference to his serious medical needs be dismissed for failure to exhaust. Plaintiff filed objections, asserting that he was unable to properly exhaust his medical grievances because the medical staff and warden did not give him the original grievance forms that he needed to file his appeals. He claims he sought copies of the documents and "expressed this issue" with the Deputy Director Kelly, who rejected his appeals for failure to follow grievance policy.

After reviewing the proposed findings and recommendations, and the timely objections received thereto, as well as a making a de novo review of the record, the Court adopts them in their entirety. In his complaint, plaintiff complains Kelly denied him "proper Appeal" of his grievances. Those claims were dismissed. In his response to defendants' motion for summary judgment, plaintiff asserted he did not have meaningful access to documents and/or exhibits required to fully present evidence to support his claims. He did not address the exhaustion issue and only now, in his objections, does he claim he sought and never received the forms required to conform with the grievance appeal process.

The evidence remains undisputed that plaintiff failed to properly exhaust as he did not follow the procedural rules for appealing his grievance. *See Woodford v. Ngo*, 548 U.S. 81, 91

(2006)(“[p]roper exhaustion demands complain with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings).

Accordingly,

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment filed by Defendants Wade and Warren (Doc. No. 63) is GRANTED, and Plaintiff's Complaint against them is DISMISSED without prejudice.

An appropriate Judgment shall accompany this Order.

IT IS SO ORDERED this 11th day of July, 2013.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE